
January 2022

Company A

Response to the CMA

Introduction

Company A provides this response paper to the request from the Competition and Markets Authority (“CMA”) for comments on possible remedies following the CMA Provisional Findings Report (the “Report”) regarding the anticipated acquisition (the “Transaction”, or “Merger”) by Cellnex UK Limited Group (“Cellnex”) of the passive infrastructure assets in the UK of the CK Hutchison Group (“CKH” or “CK Hutchison”).

Company A supports the CMA perspective that behavioural remedies would have limited effect on the provisional Substantial Lessening of Competition (“SLC”) that has been identified and would also be difficult to enforce. Company A agrees with the CMA that structural remedies – either through a prohibition of the Transaction or through a divestiture program – are likely to result in removal of the SLC.

Company A supports the CMA’s proposed divestiture strategy. As outlined later in this document, Company A has the necessary capabilities already in place to act as an independent wireless national operator and is able to execute on such transactions within a three-six month timetable.

Company A as a Counterparty to a Divestiture Remedy

Company A can act as either the sole counterparty or a joint counterparty for a divestiture program. Company A is able to acquire both existing Cellnex assets (i.e. those gained historic transactions) and also the CKH assets (i.e. those that are being acquired as part of the proposed transaction).

Suitability as a Counterparty

Company A believes that it fulfils all four criteria detailed by the CMA in their Notice of Possible Remedies document, as follows:

- a) Is independent of the Parties: Company A is an independent owner-operator of wireless infrastructure assets. Company A is fully independent of all Parties relating to the current transaction, with no overlapping shareholders;
- b) Has the necessary capability to compete: Company A’s senior team has decades of experience in UK telecoms with a proven track record in building and managing wireless infrastructure assets for customers. Furthermore, Company A has significant equity funding in-place for the acquisition and build of wireless infrastructure sites, with more equity funding available from its shareholders as required;
- c) Is committed to competing in the market: Company A is committed to competing in the UK wireless infrastructure market in both the near and long-term, particularly for macro sites. Company A’s funding from shareholders is long-term and patient;
- d) Will not create further competition concerns: Company A believes that by acting as a counterparty to the CMA divestiture program, it would not cause any competition concerns. Company A has partnered with proven suppliers in the industry and developed fit for purpose processes and systems that will enable it to be a challenger in the market without creating unnecessary distortion.

Appetite for Divestiture Assets

Company A's preference would be to acquire around 2,000 commercially viable sites as part of a divestiture program. This figure assumes that the divestiture package would be appropriately configured to be attractive to Company A, as per Clause 19 of the CMA's "Notice of Potential Remedies" document. Company A prefers to acquire tower or rooftop sites with potential for additional development beyond their current specification. Commercial viability of the sites being divested is critical to support sustainable competition once the divestiture programme has been completed.

Mitigants to Divestiture Risks

By Company A acting as a counterparty to a divestiture program, it is able to mitigate the divestiture risks outlined in Clause 5.3 in the CMA Divestiture Remedies document. These are as follows:

- Composition Risks: Company A has the financial capacity to ensure that the divestiture program will not be constrained. Furthermore, by focusing on sites that have upgrade potential, Company A believes it can operate as an effective purchase in the market;
- Purchaser Risks: as outlined above, Company A believes that purchaser risks are not significant: Company A is well funded, has an experienced management team, and can act as a viable national player to Cellnex;
- Asset Risks: Company A do not envisage any changes that may adversely impact the divestiture package prior to completion.

Additional Items where Company A can assist in Reducing SLC

Company A is also able to assist with reducing the SLC identified by the CMA in the following other aspects:

- Partner for new-build sites: given that all site portfolios are subject to natural "churn" (driven by decommissioning and landlord events), the CMA could mandate customers of Cellnex (e.g. MBNL, CTIL and all four operators) to contract bilaterally with Company A for macro new build sites, as opposed to contracting with Cellnex. Over time this would naturally reduce the SLC identified by the CMA, before the MBNL decommissioning in 2031;
- Acquisition of MBNL assets: noting that the dissolution of MBNL is not forecast to take place until 2031, if this process were to occur earlier Company A could also act as a divestiture counterparty for these assets;
- Partnership / JV with Cellnex: with inducement from the CMA, Company A could also partner directly with Cellnex on a proportion of its sites. This could take the form of a JV (whereby Company A and Cellnex share capex costs and revenue / profit on sites) or on a landlord-tenant basis (whereby Company A receives rent from Cellnex on select sites and Cellnex markets the site at a margin to end-tenants). This would also have the effect of reducing the identified SLC as part of the Transaction.

Timing

Company A can enter execution on a site and asset divestiture program in relatively short order and has a team and advisers in place to assist with technical due diligence, site due diligence and corporate finance. Company A is able to complete on a series of divestiture transactions within 3-6 months from commencement. For a 3-month transaction process, we envisage an indicative timetable (in business days) to be as follows:

- Day 0: CMA starts divestiture programme; Company A signs engagement letters with advisors
- Day 2: Initial information requests from Company A's advisors shared with Cellnex and CMA;
- Day 3-18: Advisors review information response, with follow-up questions sent as required;
- Day 30: Deadline for diligence reports produced (technical, site etc);
- Day 30: Reports reviewed by Company A's Board;
- Day 31-49: Legal documentation produced;
- Day 50-55: Review of final documentation;
- Day 56-60: Transactions close.

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